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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/625,655	07/24/2003	Andy Pearch	240148US56	8907
22850	7590	03/27/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
GOLDMAN, MICHAEL H				
ART UNIT		PAPER NUMBER		
3688				
NOTIFICATION DATE		DELIVERY MODE		
03/27/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/625,655

**Applicant(s)**

PEARCE ET AL.

**Examiner**

Michael H. Goldman

**Art Unit**

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

1. The following non-final, first action on the merits is in response to the initial filing on July 24, 2003. Claims 1-20, as originally filed, are currently pending and have been considered below.

### **Specification**

2. A preliminary examination of this application reveals that it includes terminology which is so different from that which is generally accepted in the art to which this invention pertains that a proper search of the prior art cannot be made.

For example: see page 7, line 5 of specification which recites "metric score by a qualitative algorithm " wherein page 3, line 20 "metric is a mathematical algorithm that generates a score", hence page 7, line 5 thereby reads "a mathematical algorithm that generates a score by a qualitative algorithm".

Applicant is required to provide a clarification of these matters or correlation with art-accepted terminology so that a proper comparison with the prior art can be made. Applicant should be careful not to introduce any new matter into the disclosure (i.e., matter which is not supported by the disclosure as originally filed).

**Claim Rejections - 35 USC § 112**

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 2 and 3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 2, line 3 claims "the at least one competitor". There is insufficient antecedent basis for this limitation in the claim.

**Claim Rejections - 35 USC § 103**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1-19 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Strachan G (IE 62348 B3 19950125) in view of Latta (2003/0200113).

As per claim 1 and 13 Strachan G discloses the claimed method and apparatus for assessing the cost effectiveness of an advertising campaign (page 3 lines 10-16 discloses a method and an apparatus that provides the ability to determine the cost effectiveness of specific television advertisements construed as advertising campaigns), the apparatus and method comprising:

- data input whereby at least one metric is processed from each of two external sources of which the outputs are processed to achieve a scoring for quality score and a scoring for a cost premium (see Fig. 1 item 6 advertising database and item 12 rate card database; see Fig 2 whereby items 6 and 12 are processed by item 30 campaign monitoring processor whereby the output item 35 ( see page 5, line 14 for cost per unit viewer), examiner construes cost per unit viewer as a measure of cost premium, also see Fig 2 for second processor, item 37 whereby two inputs, item 10 programmed ratings (from Fig 1) and universe and profiles items 32 and 33 (from Fig 2), also see page 5, line 21-22 whereby the output of the second processor provides a report of the viewership of programmes

sorted according to rating, see page 5, line 15 costs per viewer rating, examiner construes sorted as quality ranking or scoring;

-processor(s) transmit (output) cost and quality data for graphical display relative to cost and quality benchmarks(see page 10, line 11-22 referring to Fig 2 and all the outputs of the processors, also see page 12, lines 16-18 whereby processor 37 may be connected to a plotter for generation of graphs, also see page 12, lines 22-25 whereby a very wide range of useful reports may be generated via random access to different databases, examiner construes as to include graphical output and graphical comparison of cost and quality scoring.

However, Strachen G fails to explicitly disclose scoring relative to a benchmark.

Latta teaches the feature of scoring/comparing to a benchmark (see [0038], lines 1-3 whereby determining a value of cost savings generated by each processing center by comparing an actual cost to a benchmark).

Both Strachan G and Latta disclose a method and system for creating a marketing competitive advantage via the use of benchmarks to a market standard. Therefore, it would have been obvious to one skilled in the art at the time to modify the invention of Strachan G to include the method and system for benchmarks as taught by Latta in order to generate scoring data relative to a benchmark in order to achieve better

graphical and quantitative comparisons of cost and quality for improved marketing performance.

As per claim 2, Strachen G and Latta disclose the method and system as in claim 1 above, and Strachen G further discloses:

-data from at least one competitor advertising campaign during the advertising campaign with data concerning the same features of the ongoing campaign (see page 10, lines 11-12 and 25-26 whereby campaign monitoring processor 30 measures performance against a competitors activity, examiner construes data concerns the same features, for competitor and ongoing campaign, implicit so as to measure performance against a competitor; also see page 11, line 6 whereby the programmed ratings database 10 is being updated each day).

However, Strachen G. fails to explicitly disclose that the scoring function, award a quality score to the campaign. However, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Strachen G. to include award of a quality score to the campaign. One would have been motivated to do so in order to evaluate the performance of a campaign against other campaigns to improve assessing the cost effectiveness of an advertising campaign.

As per claim 3, Strachen G and Latta disclose the method and system as in claim 1 above, and Strachen G further discloses at least one competitor advertising campaign data is input daily and processed as desired (see page 11, line 6 whereby the programme ratings database 10 is being updated each day, and also see page 11, lines 8-9 whereby progress of a particular campaign may be analyzed, examiner construes as via desired features from data).

As per claim 4, Strachen G and Latta disclose the method and system as in claim 1 above, and Strachen G further discloses a method wherein each transmission of an advertisement on a venue is a spot, and said first set of data comprises data about each spot including spot data, a spot time and a spot duration (see page 7, lines 17-21 whereby validation circuit 4 ensures that advertisement data which is read includes a product code, a product title, a television code, a date and (spot) time of broadcast, an advertisement spot duration and associated viewership ratings, examiner construes product code, product tile and television code as spot data).

As per claim 5, Strachen G and Latta disclose the method and system as in claim 1 above, and Strachen G further discloses a method wherein the set of data comprises a campaign start date and a campaign end date (see page 9, lines 7-10).

As per claim 6, Strachen G and Latta disclose the method and system as in claim 1 above, Strachen G further discloses a method wherein the set of data comprises a planned rating for the advertising campaign (see page 9, lines 9-11 campaign target of ratings (planned rating)).

As per claim 7, Strachen G and Latta disclose the method and system as in claim 1 above, and Strachen G further discloses a method for calculated ratings (see Fig 2 item 37 whereby processor calculates ratings and outputs to items 38 and 39).

As per claim 8, Strachen G and Latta disclose the method and system as in claim 1 above, and Strachen G further discloses an apparatus wherein the second set of data comprises a costings information set for each venue (see page 5, lines 13-17 whereby means for directing generation of a report indicating cost per unit viewer and costs per viewer rating and means for sorting the data to generate performance reports for each advertisement and each campaign, also see page 7, lines 17-20 whereby advertisement data includes a television channel (venue) code).

As per claim 9, Strachen G and Latta disclose the method and system as in claim 8 above, and Strachen G further discloses a method wherein the costings information set comprises information for each program transmitted on each venue (see page 7, lines 17-20 whereby advertisement data includes a television channel code, a product title (program) and a date and time of broadcast.

However, Strachen G. fails to explicitly disclose including the advertisement data above with the costings information set function,. Therefore, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Strachen G. to include the advertisement data with the costings information. One would have been motivated to do so in order to evaluate the performance of a campaign against other campaigns for both quality and cost to improve assessing the cost effectiveness of an advertising campaign.

As per claim 10, Strachen G and Latta disclose the method and system as in claim 1 above.

Strachen G and Latta fail to explicitly disclose the method the processor matches the calculated data for program ratings on a venue with corresponding costing information. However, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Strachen G. to include the calculated data with the costings information. One would have been motivated to do

so in order to evaluate the performance of a campaign against other campaigns for both quality and cost to improve assessing the cost effectiveness of an advertising campaign.

As per claim 11, Strachen G and Latta disclose the invention as described in claim 10 above, and Strachen G, further discloses a method wherein the apparatus is configured to allow an operator to match manually each calculated program with a corresponding information set (see FIG 1 k/b (keyboard) for manual entry at several critical points items 11, 13 and 15, also see page 11, lines 22-24 whereby processor 30 allows for manual amendment of records by a keyboard).

As per claim 12, Strachen G and Latta disclose the invention as described in claims 1, 2 or 3 above.

Strachen G and Latta fail to explicitly disclose the method of transmitting the quality and cost data to storage. However, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Strachen G, to include transmitting the quality and cost data to storage. One would have been motivated to do so in order to provide for future data analysis of current campaign performance against stored campaign performance in order to improve assessing the cost effectiveness of an advertising campaign.

As per claim 14, Strachen G and Latta disclose the invention as described in claims 13 above.

Strachen G and Latta fail to explicitly disclose the method whereby the advertising campaign is publicized by means of TV advertisements'. However, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Strachen G. to include the method whereby the advertising campaign is publicized by means of TV advertisements'. One would have been motivated to do so in order to provide for validation of cost effectiveness of inventions own advertising campaign.

As per claim 15, Strachen G and Latta disclose the invention as described in claims 13 above, and Strachen G further discloses the method wherein the daypart of each spot is updated in the database(see page 9, lines 16-18 whereby database 16 is updated with data immediately when any advertisement spot is booked that includes the date and time, the channel, and the spot duration.

However, Strachen G and Latta fail to explicitly disclose the method whereby at least one metric considers the daypart of each spot. Therefore, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Strachen G. to include the method whereby the daypart of each spot is considered by one metric. One would have been motivated to do so to provide for larger

database from which to analyze performance in order to improve the assessment of cost effectiveness of advertising campaign.

As per claim 16, Strachen G and Latta disclose the invention as described in claims 13 above.

Strachen G and Latta fail to explicitly disclose the method whereby at least one metric considers the venue of each spot. However, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Strachen G, to include the method whereby the venue of each spot is considered by one metric. One would have been motivated to do so to provide for larger database from which to analyze performance in order to improve the assessment of cost effectiveness of advertising campaign.

As per claim 17, Strachen G and Latta disclose the invention as described in claims 16 above, and Strachen G further discloses the method wherein said venue is a network TV station on which each spot is transmitted (see page 10, lines 3-5 whereby as each advertisement spot is confirmed by the broadcasting station (distributor) this data is updated in the database 17).

Strachen G and Latta fail to explicitly disclose the method whereby at least one metric considers the distributor of each spot. However, it would have been obvious for a person having ordinary skill in the art at the

time of the invention to modify the invention of Strachen G. to include the method whereby the distributor of each spot is considered by one metric.

. One would have been motivated to do so to provide for larger database from which to analyze performance in order to improve the assessment of cost effectiveness of advertising campaign.

As per claim 18, Strachen G and Latta disclose the invention as described in claims 13 above.

Strachen G and Latta fail to explicitly disclose the method whereby at least one metric considers the calculated rating of each spot. However, it would have been obvious for a person having ordinary skill in the art at the time of the invention to modify the invention of Strachen G. to include the method whereby the calculated rating of each spot is considered by one metric. One would have been motivated to do so to provide for larger database from which to analyze performance in order to improve the assessment of cost effectiveness of each spot in the advertising campaign.

As per claim 19, Strachen G and Latta disclose the invention as described in claims 18 above.

Strachen G and Latta fail to explicitly disclose the method whereby at least one metric considers the planned rating of each spot. However, it would have been obvious for a person having ordinary skill in the art at the

time of the invention to modify the invention of Strachen G. to include the method whereby the planned rating of each spot is considered by one metric. One would have been motivated to do so to provide for larger database from which to analyze performance in order to improve the assessment of cost effectiveness of advertising campaign.

7. Claim 20 is rejected under 35 U.S.C. 103 (a) as being unpatentable over Strachan G (IE 62348 B3 19950125) in view of Latta (2003/0200113) as applied to Claim 13 above and in further view of Hendricks et al. (20030145323).

As per claim 20, Strachen G and Latta disclose the invention as described in claims 13 above, but Strachen G and Latta fail to explicitly disclose the method wherein at least one metric considers the location of each spot in a POD.

Hendricks et al. discloses a targeted advertisement wherein at least one metric considers the location of each spot in a POD (see [0210], lines 5-8 whereby a spot placement engine 307 decides which advertisement spots to place in open spots, or PODs, during each program).

Both Strachan G and Hendricks et al. disclose a method of using metrics for targeted television advertising. Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the invention of Strachen G. to include the method of analyzing communications to include metrics on POD placement as taught by

Hendricks et al. in order to improve the assessment of quality and cost associated with advertising placement.

### ***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL H. GOLDMAN whose telephone number is (571)270-5101. The examiner can normally be reached on Monday thru Thursday 6:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on 571-272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Art Unit: 3688

mhg

February 27, 2008

/James W Myhre/

Primary Examiner, Art Unit 3622